

D. Remarks

The claims are 1-11, 13 and 19, with claim 1 being the sole independent claim. Claims 4, 5 and 14-18 have been cancelled, without prejudice or disclaimer of the subject matter presented therein. New claim 19 has been added and claims 1, 6 and 10 have been amended to define the Applicants' invention more clearly. In particular, claim 1 has been amended to clarify that the base liquid comprises at least one liquid ingredient of the soft edible layer, and that the dry component comprises at least one dry ingredient of the soft edible layer. Claim 1 has also been amended to clarify that the combination of the base liquid and the dry component forms the edible layered component on the outside surface of the edible core. Claim 1 has also been amended to clarify that the edible layered component is an intermediate product component in the coating process, and that the layering and drying steps can be optionally repeated one or more times, whereas the soft edible layer is the final result of all of the layering and drying steps. Claim 1 has also been amended to specify that the soft edible layer is selected from a group of a peanut butter, jelly, caramel, and cookie dough. Support for these amendments may be found, *inter alia*, in paragraphs [0008], [0012], [0019], [0034], [0036] and [0038] of the specification. Claim 6 has been amended to specify that the base liquid comprises at least one ingredient selected from a group of corn syrups, water, glycerin, salt, fats, flavorings, fruit juices, fruit purees, emulsifiers, colors, texturizers, and mixtures thereof. Support for this amendment may be found, *inter alia*, in paragraph [0034] of the specification. Claim 10 has been amended to specify that the edible core is selected from a group of nuts, peanut butter, meats, SPAM®, pepperoni, ham jerky, fruits, cookie bits, crackers, cheese, imitation cheese, legumes, vegetables, sun dried tomato, confectioneries, and mixtures thereof.

Support for this amendment may be found, *inter alia*, in paragraphs [0017] and [0056] of the specification. No new matter has been added.

New claim 19 has been added to specify that the edible core is selected from the group of frozen jelly, frozen yogurts, frozen tomato sauces, and mixtures thereof. Support for new claim 19 may be found, *inter alia*, in paragraphs [0017] and [0028] of the specification. No new matter has been added. Reconsideration of the claims is expressly requested.

Claims 1-18 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. The grounds of rejection are respectfully traversed.

In particular, the Examiner has alleged that with regard to claim 1, although there is support in the specification for a “soft edible layer” that is selected from the specified group of peanut butter, jelly, cheese, caramel, cream cheese, and mixtures thereof, there is no support for an “edible layered component” that is selected from this group. First, it is noted that claims 4, 5 and 14-18 have been currently canceled, rendering the rejection with regard to these claims moot. Second, claim 1 has been amended to specify that the “soft edible layer” is selected from the specified group, which the Examiner has deemed to have support in the specification. Claim 1 has also been amended to clarify that the edible layered component is an intermediate product component in the coating process, whereas the soft edible layer is the final result of a set of layering and drying steps. Accordingly, withdrawal of the written description rejection is respectfully requested.

Claims 1-18 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The grounds of rejection are respectfully traversed.

In particular, the Examiner has alleged that in claims 1 and 14, the level of coverage encompassed by the phrases “substantially covers” and “substantially surrounds” is unclear. The indefiniteness rejection with respect to claim 14 is rendered moot due to the cancellation of claim 14. With respect to claim 1, while Applicants disagree with the Examiner, to expedite prosecution, claim 1 has been amended to delete the term “substantially” from the objected to phrase. Accordingly, withdrawal of the indefiniteness rejection is respectfully requested.

The Examiner has alleged that in claims 10 and 14, it is unclear how yogurt and tomato sauce with their liquid-like rheological properties, can constitute an edible core with an outside surface and also how they can be coated with a base liquid. The Examiner has also alleged that the term “sauce” infers that the product is a liquid, and that the step of freezing a liquid material to form a core is not presently claimed. The indefiniteness rejection with respect to claim 14 is rendered moot due to the cancellation of claim 14. With respect to claim 10, while Applicants disagree with the Examiner, to expedite prosecution, claim 10 has been amended to delete “yogurt” and “tomato sauce” from the Markush group. Further, the claims do not exclude the possibility of having a frozen edible core. In fact, paragraph [0028] and Examples 1-3 of the specification makes clear that it may be beneficial to apply the liquid and/or dry component to a frozen edible core. Accordingly, withdrawal of the indefiniteness rejection is respectfully requested.

The Examiner has alleged that the term “derivatives” renders claims 10 and 14 indefinite because it is not clear what is encompassed by this term. The indefiniteness rejection with respect to claim 14 is rendered moot due to the cancellation of claim 14. With respect to claim 10, while Applicants disagree with the Examiner and point to paragraph [0017] of the specification for meaning of the objected to terms, to expedite prosecution, claim 10 has been amended to delete the term “derivative”. Accordingly, withdrawal of the indefiniteness rejection is respectfully requested.

The Examiner has alleged that in claims 11 and 12, it is unclear how jelly constitutes both a base liquid and a dry component of the soft edible layer. The indefiniteness rejection with respect to claim 12 is rendered moot due to the cancellation of claim 12. With respect to claim 11, Applicants would like to once again clarify that a jelly is not both a base liquid and a dry component of the soft edible layer, but that a soft edible layer of jelly can be formed by coating the core with a base liquid, such as, sugar solution, followed by applying a dry component, such as, pectin with or without fruits. Alternatively, a soft edible layer of jelly can be formed by coating the core with a base liquid, such as, a hydrated pectin and fruit juice solution, followed by applying a dry component, such as sugar, followed by a drying step. In support of the formation of a soft edible layer of jelly using the presently claimed invention, a Declaration by Lisa C. Swanson (hereinafter, the Swanson Declaration) is attached. As seen from the Swanson Declaration, it is clear that one skilled in the art would readily have understood at the time of this invention how to make a jelly by dividing its typical ingredients into a base liquid and a dry component and layering them in accordance with the teaching of the presently

claimed invention. Accordingly, withdrawal of the indefiniteness rejection is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the alleged lack of written description rejections and the indefiniteness rejections of claims 1-11 and 13 should be withdrawn.

Claims 1-3, 6-10, 14, 16 and 18 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by *Given* et al. (U.S. Patent No. 4,888,187). Claims 4, 5, 13 and 15 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over *Given* et al. Claims 11 and 17 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over *Given* et al. in view of *Beharry* (PCT Publication No. WO 02/11554). The grounds of rejection are respectfully traversed.

The art rejections with respect to claims 4, 5 and 14-18 are rendered moot due to the cancellation of these claims. Independent claim 1 as currently amended, in pertinent part, is directed to a method of making a shelf stable edible snack which comprises applying on the outer surface of an edible core a soft edible layer selected from the group consisting of a peanut butter, jelly, caramel, and cookie dough, wherein the soft edible layer is formed *in situ* by layering liquid and dry components and optionally drying, and has a hardness value of 6 or less as determined by Descriptive Analysis Testing in ASTM MNL13. As disclosed in paragraph [0013] of the specification, a hardness value of 6 or less means that the soft edible layer has a measurably “soft” texture as opposed to a “firm” or “hard” texture.

Contrary to the Examiner's assertions, *Given*, on the other hand, does not disclose a soft edible layer of caramel created *in situ* by layering liquid and dry components. One skilled in the art would understand that the caramel of *Given* has already been created by a conventional method, and the act of applying chopped nuts onto the caramel layer of the snack bar simply results in a caramel with nuts on top. The language of *Given* clearly identifies four distinct components of the snack bar: the "fruit center;" the "caramel layer;" the "nut layer;" and the "chocolate coating" (col. 5, lines 34 - 68), wherein "[t]he fruit and the nuts provide two contrasting tastes, while the caramel and chocolate components provide a smoothness and a sweetening of the confectionery bar" (col 3, lines 65 - 68). *Given* does not disclose or suggest the forming of caramel by the combination of at least one liquid ingredient of the caramel and at least one dry ingredient of the caramel on the outside surface of an edible core. Consequently, Applicants respectfully submit that *Given* neither anticipates nor renders obvious the present claims.

Beharry does not remedy the deficiencies of *Given*. As previously stated, *Beharry* is directed to snack bars having a stabilized nut spread core and a confectioner's coating based on cocoa butter or hardened vegetable oils. *Beharry*, page 8, lines 20-32. The coating is applied in the melted state by dipping, pouring, spreading or the like. The Examiner asserts that *Beharry* discloses that the snack may be enrobed with "other suitable materials" and equates the "fruit flavored coatings" of *Beharry* to the soft edible layer of jelly of the present invention. However, contrary to the Examiner's assertions, *Beharry* only discloses fruit flavored conventional, fat-based coating, which clearly is not a jelly. See ¶5 of the Swanson Declaration, wherein it is clear that the disclosed ingredients necessary to prepare a jelly do not include the cocoa butter or hardened vegetable oils of

the *Beharry* coating. In addition, there is simply no disclosure or suggestion of a soft edible layer selected from the group consisting of a peanut butter, jelly, caramel, and cookie dough, wherein the soft edible layer is formed *in situ* by layering liquid and dry components, as required by the present claims.

For at least the reasons noted above, Applicants respectfully submit that *Given*, whether taken alone or in view of *Beharry* does not render obvious the above-presented claims. Applicants, therefore, respectfully request withdrawal of the § 103(a) rejections.

In view of the foregoing amendments and remarks, Applicants respectfully request that the outstanding rejections be withdrawn and that the present case be passed to issue. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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